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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,307	06/02/2000	Rochelle B. Roth	201183.00002	6714

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/586,307

Applicant(s)

ROTH ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,9,10,12-25 and 89-101 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,9,10,12-25 and 89-101 is/are allowed.
- 6) ☒ Claim(s) 3 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

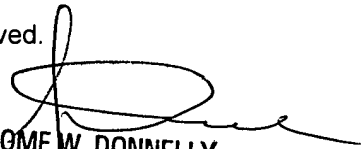
**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME W. DONNELLY  
PRIMARY EXAMINER

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2005 has been entered.

### *Response to Arguments*

2. Applicant's arguments, see pages 9-10 of the Response, filed June 13, 2005, with respect to claims 1, 9, 10, 12-25 and 89-101 have been fully considered and are persuasive. The rejection of these claims has been withdrawn.

3. Applicant's arguments filed June 13, 2005 with respect to claims 3 and 6 have been fully considered but they are not persuasive.

Applicant argues that *McWhorter* does not disclose a pocket containing a plurality of tubes (claim 3). *McWhorter* discloses sets of tubes 34 or 35 encased within covering tubes 64 and 66 entering into openings on the backside of the sleeves 26. The plurality of tubes 34 or 35 provides means for the input and output of air to a plurality of inflatable bladders 50 and 52a-f. The bladders are formed of a pair of fluid impervious sheets 44 and 46 joined together along seams 48. An inner sheet of suitable flexible material covers an inner surface of the sheets 44 and 46 and an outer sheet 58 covers the outer surface of the sheets 44 and 46 (col. 4, lines 9-13).

As shown in Fig. 3, there is an opening in the backside of the sleeve in the inner sheet of suitable flexible material through to the tubes 64 and 66 enter or are attached. Since the tubes 64 and 66 are covering a plurality of tubes 34 and 35, the plurality of tubes 34 and 35 must also enter or be attached to the opening. Since the plurality of bladders are not all located at the opening, there must be a means to provide fluid communication between the plurality of tubes 34 and 35 and the plurality of spaced bladders 50 and 52a-f. More than likely this would involve the tubes 34 and 35 continuing from the opening to respective bladders. AS there is fabric covering the entire sleeve, the inner and outer sheets of fabric form a pocket through which the tubes 34 and 35 are directed to respective bladders. This is also shown in *Arkans et al.* (US Pat. 4,320,746) referred to at col. 4, lines 18-23.

Applicant argues that *McWhorter '473* and US Pat. 4,013,069 (incorporated by reference) do not disclose a throttling device and that the valve ports 124, 130 and 138 allow deflation at a single speed or does not allow deflation (claim 6). As broadly claimed, the valve ports 124, 130 and 138 satisfy the claimed limitation of a throttling device. A “throttle” as defined by Webster's Ninth New Collegiate Dictionary 1230 (1st. ed. 1990) (definition *vt* ) **1 a** (1) : to compress the throat of : **CHOKES** (2) : to kill by such action **b**: to prevent or check expression or activity of : **SUPPRESS**. Therefore, the valve ports 124, 130 and 138 would appear to fall under the definition. The claim does not recite a throttling device for varying the rate of exhaust between of and a maximum, as applicant is inferring.

Applicant has also not argued that *McEwen et al.* (US Pat. 5,843,007) does not disclose the limitations of claim 6. See paragraph number 5 of the Final Office action. *McEwen et al.*

discloses that the valves 28, 30, 38 and 40 are electrically activated and that the level of the valve control signals changes the rate of gas flow into and out of the manifolds 24,42.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by *McWhorter* (US Pat. 5,263,473). *McWhorter* discloses a massage device for massaging a body part of a person, the massage device comprising a garment 26 for enclosing the body part, the garment having a plurality of bladders 50 and 52a-f arranged along the garment to massage the body part, each of the bladders substantially encircling a portion of the body part; and an inflation assembly 22 which supplies fluid pressure to each of the bladders to inflate the respective bladders. The garment 26 includes a pocket along substantially the entire length of at least one lateral side of the garment having an opening communicating with the respective bladders. See paragraph number 3 in the response to arguments above. The inflation assembly includes a source of inflation fluid and a plurality of tubes 34,35 extending from this source 22 into the pocket.

Various patents are incorporated by reference, including US Pat. 4,013,069 (1<sup>st</sup> ref), US Pat. 4,030,488 (2<sup>nd</sup> ref), and US Pat. 4,320,746 (3<sup>rd</sup> ref). The 3<sup>rd</sup> ref discloses further details of the construction of the garment, including a plurality of tubing extending into a pocket of the

garment to the various bladder locations. The 1<sup>st</sup> ref discloses that the controller sequentially passes a source of fluid through the tubing to the garment in order to inflate the bladders. The controller intermittently connects the inflated bladders to exhaust lines 126, 132 and 140 that including throttling devices 124, 130 and 138. See paragraph number 3 in the response to arguments above.

6. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by *McEwen et al.* (US Pat. 5,843,007). *McEwen et al.* discloses a massage device for massaging a body part of a person, the massage device comprising: a garment 4 and 6 for enclosing the body part, the garment having a plurality of bladders 908 and 1100 arranged along the garment to massage the body part, each of the bladders substantially encircling a portion of the body part; and an inflation assembly 2 which selectively inflates and deflates the bladders. During the deflation, the inflation fluid flows through exhaust lines 24 and 42 that include throttling devices 28, 30, 38 and 40. See paragraph number 3 in the response to arguments above.

***Allowable Subject Matter***

7. Claims 1, 9, 10, 12-25 and 89-101 are allowed.

8. The following is an examiner's statement of reasons for allowance: the prior art of record fails to disclose massage devices as claimed wherein the bladders have different lengths and the same inflated volume to thereby providing even inflation timing with substantially evenly

applied pressure and overall smooth massage dynamics and in some claims, wherein the equal volume of the bladders is provided by necking seams.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
August 24, 2005

  
JEROME W. DONNELLY  
PRIMARY EXAMINER